

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Empowering Consumers to Avoid Bill Shock)	CG Docket No. 10-207
)	
Consumer Information and Disclosure)	CG Docket No. 09-158

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”)¹ respectfully submits these comments in response to the Notice of Proposed Rulemaking (“*NPRM*”) released by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.² As discussed below, while it is true that consumers do go over their buckets of service at times, the record in this proceeding – including filings from The Nielsen Company – demonstrates that the scope of the problem is not remotely as large as presented. The FCC should refrain from initiating prescriptive rules that not only would likely cost carriers (and therefore consumers) tens, if not hundreds, of millions of dollars to put into practice, but that also would raise numerous legal issues, create substantial implementation challenges, and force companies to upgrade to a set of government standards instead of creatively competing in the provision of

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² *Empowering Consumers to Avoid Bill Shock*, Notice of Proposed Rulemaking, 25 FCC Rcd 14625 (2010) (“*NPRM*”).

service to customers. Instead, the FCC should use its considerable resources to make customers aware of the capabilities already available to consumers.

Multiple studies, including some from the FCC and other Federal government agencies, have confirmed that the overwhelming majority of consumers are satisfied with their wireless service, their wireless service providers, and their providers' responsiveness to billing inquiries. Thus, instead of adopting prescriptive regulations that would curtail significantly the flexibility of wireless providers to offer innovative new account management tools, the Commission should work with carriers and the wireless industry to educate consumers about the variety of tools that are already available to avoid unexpected mobile charges.

I. INTRODUCTION AND SUMMARY

Wireless service providers face competitive pressures from all sides of the marketplace to win and retain customers. In 2009 alone, 66 million customers changed their carrier. Carriers are constantly working to ensure that customers are happy, and they are keenly aware that consumers do not like unintended overages. Wireless service providers take seriously the need to address overages and provide consumers with an ever-growing suite of innovative account management tools and resources that enable customers to monitor their usage. Nearly all carriers offer their customers an assortment of services and tools for monitoring and tracking their use, including: device-based tools such as dialing shortcuts, text message alerts, and applications; data usage calculators; Internet-based resources; and other innovative features such as parental controls that allow for monitoring activity and restricting use. Consumers who want to limit their usage or are concerned about billing surprises also have a plethora of prepaid options from which to choose (and the accompanying account management tools offered by prepaid providers). Carriers representing nearly 93 percent of U.S. subscribers also have voluntarily signed on to CTIA's Consumer Code for Wireless Service ("Consumer Code" or "Code"),

demonstrating further the industry-wide commitment to addressing consumer concerns. The Consumer Code is memorialized in the FCC's Universal Service Fund rules at Section 54.202(a)(1)(ii)(3) as a requirement for the grant of competitive eligible telecommunications carrier ("CETC") status.³

Numerous studies, including the Commission's own *Bill Shock Survey*, have established that the overwhelming majority of consumers are satisfied with their wireless providers and that providers are increasingly responsive to consumer needs. According to the Better Business Bureau, the wireless industry resolved 97.4 percent of all complaints in 2009. They also show that to the extent there are billing overages, they tend to involve smaller amounts and are routinely resolved by wireless providers through credits and other accommodations. The *NPRM* disregards these successes, however, in search of a "bill shock" problem. In doing so, it mischaracterizes flawed data, fails to reflect accurately the extent and magnitude of consumers' experiences with overages, distorts the true level of consumer satisfaction, and ignores the broad array of account management tools available from wireless providers and third parties.

The Commission's far-reaching proposals in the *NPRM* raise a number of complex technical, economic, and factual issues that would create substantial implementation challenges for CTIA's members and potentially cause a negative effect across the wireless ecosystem. Notably, it would require carriers large and small to modify their existing customer notification practices and restructure (or even replace) their billing systems to match a specific regulatory proposal. In addition, many carriers would have to implement extensive network upgrades throughout their service areas. Tens, and possibly hundreds, of millions of dollars in billing system, customer support, and network upgrade costs will be passed on to consumers, as all

³ 47 C.F.R. § 54.202(a)(1)(ii)(3) (providing that "[a] commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy" the agency's consumer protection and service quality requirements).

regulatory costs are. It is unsurprising, then, that Congress and Federal agencies have not considered similar prescriptive consumer alerts to be necessary in other contexts involving various types of “over the limit” expenses.

The Commission also lacks authority to adopt the proposed rules. Specifically, the Communications Act prohibits the Commission from requiring wireless carriers to provide usage alerts and other information disclosures related to SMS and wireless broadband data services. And such requirements would violate the First Amendment because they are unduly burdensome and are not justified by the record in this proceeding (regardless of whether they apply to voice, SMS, or data services).

Carriers are driven by competition to provide wireless consumers with an abundance of effective options for tracking their wireless usage, and to ensure that consumers are aware of and use those tools. Because these marketplace forces are inherently more effective and responsive than prescriptive regulations, the Commission should refrain from imposing new mandates that will effectively limit carriers’ ability to provide effective consumer account management tools. Instead, the Commission should continue to focus on educating wireless consumers about the options that are currently available, including by publicizing carrier-provided tools and third-party resources. The Commission also can remove existing regulatory uncertainty by reaffirming carriers’ ability under the Telephone Consumer Protection Act to provide voluntary alerts to consumers. Through these efforts, the Commission can incentivize wireless carriers further to provide as many effective account management tools as possible to assist consumers in avoiding billing surprises.

II. RATHER THAN IMPOSING CARRIER MANDATES, THE COMMISSION SHOULD WORK WITH CARRIERS TO MAKE CONSUMERS BETTER AWARE OF THE MYRIAD TOOLS AVAILABLE TO MANAGE THEIR ACCOUNTS.

Instead of imposing a regulatory mandate that will inevitably reduce the flexibility of wireless carriers to offer innovative tools for avoiding unexpected mobile charges, the Commission should consider other ways of educating consumers regarding the options currently available. As Chairman Genachowski stated recently in a related context, “[t]his isn’t about government regulation. It’s about responsibility. It’s about information and education. It’s about empowerment.”⁴ In the fiercely competitive wireless market, consumers are very much empowered. The FCC can help to advance consumer education even more.

First, the Commission’s Consumer and Government Affairs Bureau (“Bureau”) should supplement its current Consumer Task Force webpage on tips for avoiding unexpected mobile charges⁵ with information regarding (and links to) independent publications or websites that describe and review the helpful tools carriers make available to their customers. Some organizations and websites worth mentioning include Consumer Reports,⁶ which is generally available at no cost in public libraries, and a host of free services, including Utility Consumer’s Action Network (“UCAN”)⁷ and LifeHacker,⁸ to name a few.

⁴ Remarks of Chairman Genachowski at “Generation Mobile” Forum at 3 (Dec. 14, 2010).

⁵ See *Mobile Minutes Made Simple: Tips for Avoiding Bill Shock Now*, FCC, <http://www.fcc.gov/cgb/consumerfacts/billshocktipsheet.html> (last updated Aug. 25, 2010). As noted above regarding the *NPRM* and Bill Shock Survey, the current language of webpage exaggerates greatly the “bill shock” issue. It also appears to have prejudged the need for automatic usage alerts. See *id.* (“Without automatic usage alerts, it can be hard to know when you’re running up a surprisingly high wireless bill.”). As discussed above, CTIA strongly disagrees with this view.

⁶ See *Best New Cell Phones & Plans*, Consumer Reports 26-38 (Jan. 2011), available at <http://www.consumerreports.org>.

⁷ See *How To Check Your Cell Phone Minutes and Account Balance*, UCAN, http://www.ucan.org/telecommunications/wireless/check_your_cell_phone_minutes_and_account_balance (last accessed Dec. 24, 2010).

Second, although the Bureau's current webpage recommends that consumers ask their carriers how they might be able to avoid unexpected mobile charges, it does not contain links to carrier-provided information on the subject. Such links would be helpful to consumers seeking practical guidance on the issue. In general, the information is available in CTIA's 2010 blog post: "Consumer Tip: How to Manage Your Wireless Account."⁹

Given the fiercely competitive nature of the wireless market, wireless carriers take very seriously the assessments of neutral, third-party organizations regarding the services they offer. The Commission could take advantage of this fact by publicizing such resources. Similarly, the Commission could better serve consumers seeking practical ways to avoid unexpected mobile charges by publicizing the carrier-provided tools available. Moreover, unlike the proposed regulatory mandate, an educational initiative such as this would help consumers avoid unexpected mobile charges without stifling the development of innovative, new account management tools or increasing the cost of wireless service. Through such an initiative, the Commission would create a strong incentive for wireless carriers to continue providing as many helpful tools for avoiding unexpected mobile charges as possible.

III. WIRELESS CARRIERS COMPETE ON CUSTOMER SERVICE AS A TOP PRIORITY, AND NEW PRESCRIPTIVE REGULATIONS ARE UNNECESSARY.

A. Wireless Carriers Compete Vigorously on the Basis of Their Customer Service Offerings, Including the Provision of Account Management Tools, and the Commission Should Not Impose New Mandates That Limit Carriers' Ability to Provide These Tools.

Wireless carriers use many issues, including customer service, to compete with one another. The wireless industry is intensely competitive on customer service issues, driven by the

⁸ See *How to Keep Track of Your Cellphone Data Usage*, LifeHacker, <http://lifehacker.com/5557836/the-best-tools-for-monitoring-your-cellphone-data-usage> (last accessed Dec. 24, 2010).

⁹ <http://www.ctia.org/blog/index.cfm/2010/5/12/Consumer-Tip-How-to-Manage-Your-Wireless-Account> (last accessed Jan. 10, 2011).

constantly evolving capabilities of advanced wireless technologies and service offerings and the corresponding changes in consumer expectations. Financial markets and investors also drive this competition because they closely monitor wireless carriers' customer acquisition and churn rates to assess their performance and investment potential. In 2009 alone, 66 million Americans changed their wireless carrier.¹⁰ Thus, wireless carriers face pressure from all sides of the marketplace to win and keep customers, eliminating the need for new usage alert and information disclosure mandates.

Consumers do not like billing surprises. As a result, wireless carriers recognize that they must do what they can to avoid those surprises in order to retain and attract customers by offering attractive service plans, disclosing fully the terms of service related to usage and billing, and providing innovative account management tools and resources that enable customers to monitor their usage. Included in this section is a chart documenting many of the consumer-friendly practices of nine wireless carriers that have emerged as the result of competition. As discussed herein, most wireless carriers (including all major carriers) have voluntarily signed on to CTIA's Consumer Code, demonstrating an industry-wide commitment to addressing consumer concerns. These carriers that abide by the Consumer Code serve nearly 93 percent of all U.S. wireless customers. Carriers have provided and will continue to provide wireless consumers with an abundance of effective options for tracking their wireless service. In fact, nearly all carriers offer their customers a plethora of services and tools for tracking their use, including: device-based tools such as dialing shortcuts, text message alerts, and applications; Internet-based resources; and other innovative features such as parental controls that allow for monitoring activity and restricting use. Wireless carriers will continue innovating to retain their

¹⁰ CTIA – The Wireless Association, *CTIA's Wireless Industry Indices, Year-end 2009 Results* at 75 (May 20, 2010).

current customers and draw customers away from their competitors, and carriers that fail to provide adequate account management tools will quickly be left behind in the marketplace.

1. CTIA's Consumer Code for Wireless Service Ensures that the Industry is Responsive to Consumer Issues.

CTIA's Consumer Code addresses the most important concerns consumers have in selecting and managing their wireless service.¹¹ It is an evolving document that currently includes, among other things, commitments by wireless providers to:

- disclose rates, additional taxes, fees, surcharges and terms of service in their billing materials;
- make available maps showing where service is generally available;
- provide contract terms to customers and confirm changes in service;
- permit trial periods for new service;
- provide specific disclosures in advertising;
- separately identify carrier charges from taxes on bills;
- provide customers the right to terminate service for changes to contract terms;
- ensure readily accessible customer service;
- respond promptly to consumer inquiries and complaints from government agencies; and
- abide by policies for the protection of customer privacy.

Many national, regional, and rural wireless carriers are signatories to the Code and have committed to delivering consumers the high quality of service the Code demands. The Code's signatories cover almost 93 percent of U.S. wireless consumers and include AT&T, Cellcom, CellularOne of NE Arizona, Clearwire, Illinois Valley Cellular, SouthernLINC Wireless, Sprint, T-Mobile USA, UniceL, U.S. Cellular and Verizon Wireless.

¹¹ *Consumer Code*, CTIA, <http://www.ctia.org/content/index.cfm/AID/10352> (last accessed Dec. 28, 2010).

CTIA first developed the Code in 2003 and periodically reviews it to ensure that it meets consumers' needs and expectations and reflects industry innovations. CTIA recently updated the Code to include new terms of service disclosures related to data allowances, data service usage, and network management practices, as well as additional customer service commitments. This recent update took effect on January 1, 2011.¹² CTIA will continue to review and modify the Code as appropriate to ensure that it is responsive to consumer issues.

2. Wireless Carriers Offer Many Tools that Enable Consumers to Monitor Their Wireless Use.

Wireless carriers offer consumers a growing assortment of tools to monitor their account features, voice and data usage, and other activity directly through their mobile device and on the web. As described below, they provide dialing shortcuts, websites, text-based alerts, cut-off mechanisms, parental controls, and applications to enable consumers to monitor usage – including their roaming and international usage. With these diverse tools readily available to consumers, new usage alert requirements are entirely unnecessary; moreover, imposing new requirements in this area could restrict carriers' ability to offer innovative new account management tools to their customers.

Shortcuts and Websites. A host of wireless providers, including Alaska Communications Systems ("ACS Wireless"), AT&T, Cellcom, Sprint Nextel, T-Mobile, U.S. Cellular, Verizon Wireless, and others, offer simple shortcuts that consumers may dial or text from their mobile device to check their usage.¹³ These providers, and others such as Cox Wireless, also offer

¹² See Amy Storey, *CTIA Announces Updates to Its "Consumer Code for Wireless Service,"* Press Release (July 28, 2010), available at <http://www.ctia.org/blog/index.cfm/2010/7/28/CTIA-Announces-Update-to-Its-Consumer-Code-for-Wireless-Service>.

¹³ See Christopher Guttman-McCabe, *Consumer Tip: How to Manage Your Wireless Account*, CTIA Blog (May 12, 2010), <http://www.ctia.org/blog/index.cfm/2010/5/12/Consumer-Tip-How-to- Manage-Your-Wireless-Account>; *Check My Wireless Usage*, ACS Wireless, <https://www.alaskacommunications.com/Account/Manage-My-Account/Check-My-Wireless-Usage.aspx>

websites for consumers to obtain information about their current usage and account status.¹⁴ In addition, Verizon Wireless, Sprint Nextel, and AT&T provide tools on their websites that enable customers to monitor their data use.¹⁵ And owners of Apple's iPad can monitor their data use directly from their device.¹⁶

Alerts and Cut-Off Mechanisms. Many wireless carriers also provide text-based usage alerts and cut-off mechanisms designed to limit or prevent overages. For example, under U.S. Cellular's "Overage Protection" initiative, customers receive free text message alerts when they approach or reach their voice or text limits.¹⁷ Sprint Nextel's "Spending Limit" program establishes a maximum balance that each customer's account can reach before service is

(indicating that customers may enter #ACS on their device to check their usage) (last accessed Dec. 29, 2010).

¹⁴ See, e.g., *MyWireless*, AT&T, <https://www.att.com/olam/dashboardAction.olamexecute> (customers may monitor their usage and billing by creating a profile and logging into "Online Account Management") (last accessed Dec. 28, 2010); *myCellcom*, Cellcom, http://www.cellcom.com/my_cellcom.html (last accessed Dec. 28, 2010) (myCellcom is a free service that allows customers to view recent invoices, make payments, and check minutes, data and messaging use); *Wireless Support: Wireless Tools*, Cox, <http://ww2.cox.com/residential/omaha/support/wireless/article.cox?articleId={efcfb880-e5ea-11df-f802-000000000000}> (customers can use Wireless Tools to monitor and obtain detailed information about their use) (last accessed Dec. 29, 2010); *My Sprint*, Sprint, <https://mysprint.sprint.com/mysprint/pages/sl/common/createProfile.jsp?notMeClicked=true> (customers can create a "My Sprint" account that enables online account management, including usage monitoring) (last accessed Dec. 28, 2010); *My T-Mobile*, T-Mobile, <https://my.t-mobile.com/Login/> (customers can monitor voice and text usage after creating a "My T-Mobile" account) (last accessed Dec. 28, 2010); *My Account*, U.S. Cellular, <http://www.uscellular.com/uscellular/> (customers can access "My Account" from the link at the top of the screen to create an account and view usage information) (last accessed Dec. 28, 2010); *MyVerizon*, Verizon Wireless, <http://www.verizonwireless.com/b2c/index.html?tab=myaccount> (customers can view usage information after creating a "MyVerizon" account) (last accessed Dec. 28, 2010).

¹⁵ See *Online Account Management*, AT&T, <https://www.att.com/olam/loginAction.olamexecute?customerType=W> (last accessed Dec. 28, 2010); *User Guide: Sprint SmartView*, Sprint (2009), available at http://www6.sprint.com/downloads/sprint_smartview/pdfs/SSVUserGuideWindows2.25.pdf; *VZ Access Manager*, Verizon, <http://www.vzam.net/> (last accessed Dec. 28, 2010).

¹⁶ See, e.g., Apple, <http://www.apple.com/ipad/3g/> (indicating how consumers can check their data usage anytime) (last accessed Dec. 28, 2010).

¹⁷ *The Belief Project*, U.S. Cellular, <http://www.uscellular.com/the-belief-project/index.html?a=bs&b=overage> (last accessed Dec. 28, 2010).

temporarily deactivated, and offers text-based notifications when an account is approaching its maximum balance.¹⁸ Similarly, T-Mobile's "SmartAccess" program permits postpaid customers to set a spending limit, and if their account balance exceeds their limit, T-Mobile will temporarily interrupt their service until a payment is made to reduce the balance.¹⁹ In addition, T-Mobile's "Take Control" program gives customers a voice reminder that their minutes are running low each time they make a call with less than 50 minutes remaining on their plan, and also issues three beeps when customers have one minute of use remaining.²⁰ Apple iPad users can also receive alerts when they are approaching their data limits.²¹

Parental Controls. Numerous wireless carriers provide extensive controls that permit parents to monitor and control their family's voice, text, and data usage and avoid billing overages. These controls include tools that allow parents to monitor use; set allowances for minutes, messages, and downloads; receive notices when a family member approaches or reaches their limit; and restrict the sending and receiving of calls and text messages based on the time of day or a list of blocked numbers.²²

¹⁸ *Spending Limits*, Sprint, http://shop.sprint.com/en/support/faq/spending_limits.shtml (last accessed Dec. 28, 2010).

¹⁹ *See Plan Support*, T-Mobile, http://support.t-mobile.com/plan.html?WT.z_unav=mst_support_plan_svc (scroll down to "Plan and service information" and select "SmartAccess") (last accessed Dec. 28, 2010).

²⁰ *See id.* (scroll down to "Plan and service information" and select "Rate plans/Take Control").

²¹ *See, e.g., Apple*, <http://www.apple.com/ipad/3g/> (indicating that customers will receive onscreen alerts when their remaining data is at 20 percent, 10 percent, and zero) (last accessed Dec. 28, 2010).

²² *See, e.g., AT&T Smart Controls*, AT&T, <http://www.att.net/smartcontrols-Wireless> (select AT&T Smart Limits for Wireless) (parents can use AT&T Smart Limits to select how and when their child can use the phone, including time-of-day, number of text messages, and minutes limitations, and provides alerts when their child reaches their text message or voice limits) (last accessed December 28, 2010); *Sprint Nextel Parental Controls*, Sprint Nextel, http://my.nextel.com/en/services/safety_security/parental_control.shtml, (enabling parents to control Internet access, texting, content purchases, voice calls and camera use); *Family Allowances*, T-Mobile, <http://support.t-mobile.com/doc/tm23703.xml> (parents can use T-Mobile's Family Allowances to select how many minutes, messages, and downloads each person in a family plan is allotted and sends an alert and temporarily disables service when a family member reaches his or her allowance) (last accessed Dec. 28, 2010); *Parental Controls: Take Control*,

Account Management and Usage Monitoring Applications. Consumers can also track their voice, text, and data usage using various account management applications that are available on virtually every smartphone platform. Many such applications are developed and offered by wireless carriers, including T-Mobile, Verizon Wireless, AT&T and MetroPCS.²³

Consumers also have access to a number of free and low-cost usage monitoring applications from third-parties. These applications are available on different platforms, and many provide usage alerts.²⁴ CellPlan Tracker, DAVID, and Cell Manager (all available in the BlackBerry App World) monitor voice and text minutes and notify users when they are approaching their plan limits. DAVID and Cell Manager also monitor data usage.²⁵

Verizon Wireless, https://wbillpay.verizonwireless.com/vzw/nos/uc/uc_overview.jsp (parents can use Parental Controls to limit their children's voice minute and text message usage) (last accessed Dec. 28, 2010).

²³ See, e.g., *T-Mobile My Account*, AndriLib, <http://www.andriolib.com/android.application.com-tmobile-selfhelp-jimF.aspx> (consumers can access their T-Mobile account to track their voice minute usage, their remaining messages, view their bill summary, and turn on usage alerts) (last accessed Jan. 5, 2011); *My Verizon Application for BlackBerry*, Verizon Wireless, <http://www.verizon-phones.org/verizons-%e2%80%9cmy-verizon%e2%80%9d-application-for-blackberry-now-available.html> (consumers can use the My Verizon application on their BlackBerry to check their minute and data usage, view their account balance, make payments, view their plan, add or remove features, and change their voicemail passwords) (last accessed Dec. 28, 2010); *AT&T myWireless Application*, iTunes, <http://itunes.apple.com/app/at-t-mywireless-mobile/id309172177?mt=8> (consumers can use the "myWireless Application" to track voice, text message, and broadband usage) (last accessed Dec. 28, 2010) (this application is also available in the BlackBerry App World); and *myMetro User Guide*, MetroPCS, http://www.metropcs.com/products/mymetro/mymetro_guide.aspx (consumers can use the myMetro Application to track their usage, manage their MetroPCS account, view account information, pay their bill, add features, and more) (last accessed Dec. 28, 2010).

²⁴ See, e.g., *Netcounter*; *Minute Tracker*; *Mobile Minutes Tracker Premium*, BlackBerry App World, <http://appworld.blackberry.com/webstore/content/2617> (customers can use BlackBerry's Mobile Minutes Tracker Premium to monitor or view their current minute balance, rollover minutes, data plan balance, SMS use, billing details, and previous payments, and can receive overcharge protection alerts) (last accessed Dec. 28, 2010); *Netcounter-Monitor Data Usage on the Droid*, DroidApps, <http://www.droidapps.org/netcounter-monitor-data-usage-on-the-droid/> (consumers can track data usage and receive alerts on the Netcounter Application) ("Netcounter") (last accessed Dec. 28, 2010).

²⁵ *CellPlan Tracker*, BlackBerry App World, <https://appworld.blackberry.com/webstore/content/5841?lang=en> (last accessed Jan. 5, 2011); *DAVID*, BlackBerry App World, <https://appworld.blackberry.com/webstore/content/2099?lang=en> (last accessed Jan. 5, 2011); *Cell Manager*, BlackBerry App World, <https://appworld.blackberry.com/webstore/content/13929?lang=en> (last accessed Jan. 5, 2011).

MeterReader, also available in the BlackBerry App World, provides users with e-mail, text, PIN, voice, and MMS usage information.²⁶ Similarly, Cell Minute Tracker monitors iPhone voice, SMS, and data usage and provides overcharge protection alerts, while numerous iPhone applications offer similar features.²⁷ Android users can download PhoneUsage and other applications to track their voice, SMS, and data usage and receive alerts.²⁸ Some applications, such as the “Mobile Minutes Tracker Premium” application for BlackBerry, also permit consumers to add features, view bill details, and review previous payments. In addition to smartphone applications, there are several third-party mobile usage tracking services available to assist users in monitoring their wireless usage, many of which are free.²⁹

²⁶ MeterReader, BlackBerry App World, <https://appworld.blackberry.com/webstore/content/3526?lang=en> (last accessed Jan. 5, 2011); *see also Minutes Tracker Android App Review*, Android Tapp, <http://www.androidtapp.com/minutes-tracker/> (T-Mobile consumers can track their voice usage using Minutes Tracker Application for Android) (“Minute Tracker”) (last accessed Jan. 5, 2011); MX Minute Tracker, BlackBerry App World, <https://appworld.blackberry.com/webstore/content/screenshots/4110?lang=en> (allows users to track all of their voice minutes, including anytime minutes, weekday, evening/weekend, weeknight, incoming, rollover, and others) (last accessed Jan. 5, 2011).

²⁷ Cell Minute Tracker, Apple, <http://itunes.apple.com/app/cell-minute-tracker-for-at-t/id311637771?mt=8> (last accessed Jan. 5, 2011); *see also, e.g.*, Data Usage Tracker, Apple, <http://itunes.apple.com/us/app/data-usage-tracker/id405805718?mt=8#> (monitors iPhone and iPad data usage and provides alerts) (last accessed Jan. 5, 2011); Data Usage, Apple, <http://itunes.apple.com/pt/app/data-usage/id386950560?mt=8#> (same) (last accessed Jan. 5, 2011); My Data Usage Pro, Apple, <http://itunes.apple.com/us/app/my-data-usage-pro/id396349239?mt=8#> (same) (last accessed Jan. 5, 2011); QuickMin, Wildboom, <http://www.wildboom.com/our-work/quickmin> (enables iPhone users to track their remaining voice minutes) (last accessed Jan. 5, 2011).

²⁸ PhoneUsage, AppBrain, <http://www.appbrain.com/app/phoneusage/com.jupiterapps.phoneusage> (last accessed Jan. 5, 2011); *see also Stats Tracks Your Android Talk Time, Data, and Text Usage*, Lifehacker, <http://lifehacker.com/5644762/stats-tracks-your-android-talk-time-data-and-text-usage> (tracks voice, SMS, and data usage and enables users to set limits and receive usage alerts) (last accessed Jan. 5, 2011); 3G Watchdog, AndroidZoom, http://www.androidzoom.com/android_applications/tools/3g-watchdog_ecn.html (monitors data usage and provides alerts) (last accessed Jan. 5, 2011); Phanalyzer Pro, AndroidZoom, http://www.androidzoom.com/android_applications/communication/phanalyzr-pro_ndyn.html (tracks voice, SMS, and data usage) (last accessed Jan. 5, 2011); MyCalls Lite, AndroidZoom, http://www.androidzoom.com/android_applications/communication/mycalls-lite_fxax.html?nav=googleDownload (same) (last accessed Jan. 5, 2011).

²⁹ *See, e.g.*, <http://www.overmyminutes.com> (last accessed Dec. 28, 2010); <http://www.cellknight.com> (last accessed Dec. 28, 2010).

International Voice and Data Usage Monitoring Tools. Consumers can also track or limit their international voice and data usage via tools offered by their carriers or with third-party applications. For example, many wireless carriers and the Commission provide information and resources on their websites for consumers who plan to travel internationally.³⁰ Carriers also provide tools for tracking international use on certain wireless devices,³¹ permit consumers to disable data service on the devices,³² and deliver alerts regarding international use.³³ In addition, applications are available to smartphone users for tracking international use,³⁴ such as Blackberry's "e-office Mobile Data Alerter," which enables consumers to monitor their international data use, set up usage-based alerts, and identify which applications on their devices are using data.³⁵

With so many readily accessible account management tools already provided by carriers and third parties, there is no need for the Commission to promulgate new prescriptive usage alert and information disclosure regulations.

³⁰ See, e.g., *International Calling Rates and Packages*, AT&T, <http://www.att.com/global> (last accessed Dec. 28, 2010); *Travelling Internationally*, Sprint, http://shop.sprint.com/en/services/worldwide/travelabroad_sprint.shtml (last accessed Dec. 28, 2010); *What do I need to do before using my phone while travelling internationally?*, T-Mobile, <https://support.t-mobile.com/doc/tm22038.xml?related=y&Referring%20Related%20DocID%20List%20Index=1&docid=694&navtypeid=6&pagetypeid=7&prevPageIndex=4> (last accessed Dec. 28, 2010); Verizon Wireless, *International Services*, www.verizonwireless.com/global (last accessed Dec. 28, 2010); see also *Wireless World Travel Made Simple*, FCC, <http://www.fcc.gov/worldtravel/> (last updated July 28, 2010).

³¹ See, e.g., *Information on International Calling from Wireless Providers, VoIP Services, and Smartphone Manufacturers*, FCC, <http://www.fcc.gov/worldtravel/WWTWproviders.html> ("FCC Wireless World Travel") (last updated June 23, 2010).

³² See, e.g., *iPhone Travel Tips*, AT&T, <http://www.wireless.att.com/learn/international/roaming/iphone-travel-tips.jsp> (last accessed Dec. 28, 2010) (offering travel tips for iPhone users travelling outside of the United States to limit or eliminate unwanted expenses).

³³ See FCC Wireless World Travel (describing text messages sent by Verizon Wireless to their customers when they power up their phone in a foreign country, which provide disclosures about potential data roaming rates).

³⁴ See *id.*

³⁵ *e-Office Mobile Data Alerter*, Blackberry App World, <http://appworld.blackberry.com/webstore/content/1807> (last accessed Dec. 28, 2010).

3. Prepaid, Pay-As-You-Go, and Related Service Plans Provide Consumers With an Alternative Account Management Option.

Consumers concerned about overages can select a prepaid, pay-as-you-go, or similar service plan and prevent any possibility of an unexpectedly high bill. Many consumers have already embraced prepaid service, and there were more than 30 providers serving more than 60 million prepaid and pay-as-you go customers as of June 30, 2010.³⁶ At that time, prepaid wireless consumers accounted for about 20.5 percent of all wireless connections and 19.1 percent of the population of the United States and its territories.³⁷

As with postpaid services, pre-paid and pay-as-you-go carriers such as TracFone Wireless,³⁸ Cricket Communications,³⁹ and MetroPCS⁴⁰ provide tools that allow consumers to monitor their use online or from their device. For example, TracFone's Airtime Balance Display enables consumers to control their use by providing updates on their remaining minutes and by notifying them when their minutes run out.⁴¹ Thus, consumers who want to limit their usage or are concerned about billing surprises not only have numerous prepaid options to choose from, but they can also actively monitor their usage through the tools offered by prepaid providers.

³⁶ CTIA, *Prepaid Wireless Service in the United States: A Snapshot from CTIA based on CTIA's Semi-Annual Wireless Industry Survey Results: Mid-Year 2010 Results* (Nov. 2010).

³⁷ *Id.*

³⁸ *My Account*, TracFone, <https://www.tracfone.com/direct/MyAccount?app=TRACFONE&lang=en> (consumers can use "My Account" to monitor their TracFone use) (last accessed Dec. 28, 2010).

³⁹ *MyCricket*, Cricket, <https://account.mycricket.com/> (consumers can use "MyCricket" to track their payments and usage, change plans, and add minutes) (last accessed Dec. 28, 2010).

⁴⁰ *My Account*, MetroPCS, <http://www.metropcs.com/> (consumers can use "My Account" to monitor their usage or manage their account online and are notified of their remaining balance during any call outside the MetroPCS network) (last accessed Dec. 28, 2010).

⁴¹ *General Information > About Tracfone*, TracFone, <http://www.tracfone.com/includes/content/questions/AboutTracFone.jsp?a=1288157085290> (last accessed Dec. 29, 2010).

Furthermore, wireless carriers also have introduced “unlimited” plans with fixed monthly fees.⁴²

These options further reduce the need for and value of new “bill shock” mandates.

B. Wireless Carriers Are Continuing to Introduce Innovative New Customer Service Features and Educate Consumers About the Numerous Account Management Tools Available, Eliminating the Need For New Prescriptive Regulations.

Competitive pressure has produced innovative and sophisticated customer service features and account management tools that empower consumers to monitor and control their voice, text, and data usage. Innovation in this area will only increase as competition for consumers – and investment dollars – spurs carriers to provide ever more sophisticated and user-friendly account management tools, particularly tools for addressing consumer billing issues.⁴³ Using these tools, consumers can easily manage and assume responsibility for their usage and avoid “bill shock,” eliminating the need for new regulatory mandates. Carriers are constantly introducing innovative new account management tools to ensure that their customers are fully informed about their wireless usage and billing details.

⁴² See, e.g., *Plans*, Clearwire, <http://www.clearwire.com/learn/plans> (last accessed Jan. 3, 2011); *Plans*, Sprint, <http://shop.sprint.com/NASApp/onlinestore/en/Action/DisplayPlans?INTNAV=ATG:HE:Plans> (last accessed Jan. 3, 2011); *Cell Phone Plans*, Cricket, <http://www.mycricket.com/cell-phone-plans> (last accessed Jan. 3, 2011); see also Comments of CTIA – The Wireless Association®, WT Docket No. 10-133, 40-42 (filed July 30, 2010) (providing additional examples of unlimited, flat-rate plans).

⁴³ See *supra*, Section III.A.

	ETF policies	Trial period	Point of sale information/ documentation	Online, street-level coverage maps	Ability to change plan w/o contract extension	Ability to purchase service w/o a contract (prepaid)	Ability to check usage info/balance from web site, device	Post-paid plan bill shock preventative tools	Provides international roaming information/alerts	Ability to bring your own phone	Ability to pay full price for a handset and take service w/o a contract
AT&T	Prorates new and renewed 1 & 2 year consumer contracts. Fees decline each completed month of the contract (amounts vary by device) ⁱ	30-day ⁱⁱ	Follows CTIA Consumer Code	Yes ⁱⁱⁱ	Yes ^{iv}	Yes ^v	Yes ^{vi} , dial *BAL# for account balance, *MIN# for minutes, and *DATA# for data usage	Smart Limits - determine how and when the phone can be used and sends an alert when the limit for texts or minutes is reached ^{vii}	Yes ^{viii} /No	Yes ^{ix}	Yes ^x
Sprint Nextel	Prorates new and renewed 1 & 2 year consumer contracts. Fees decline by \$10 per month, beginning with the 5th month of the contract until reaching \$50 for the remaining 5 months of the contract ^{xi}	30-day ^{xii}	Follows CTIA Consumer Code	Yes ^{xiii}	Yes ^{xiv}	Yes ^{xv}	Yes ^{xvi} , dial *4 for usage and balance	Spending Limit - set a max balance for a given time. For multiple phones accounts, users set spending limits per phone ^{xvii}	Yes ^{xviii} /No	Yes ^{xix}	Yes, with prepaid plans ^{xx}
T-Mobile USA	Prorates new and renewed 1 and 2 year consumer contracts. \$200 with > 180 days left, \$100 with > 90 days left, and the lesser of \$50 or the customers' standard monthly charge with < 90 days left ^{xxi}	14-day (30 days in CA) ^{xxii}	Follows CTIA Consumer Code	Yes ^{xxiii}	Yes ^{xxiv}	Yes ^{xxv}	Yes ^{xxvi} , dial #BAL# (#225#), for current balance	Family Allowances - set the minutes, messages, and downloads each person gets; automatic notice upon reaching allowance ^{xxvii}	Yes ^{xxviii} /Yes ^{xxix}	Yes ^{xxx}	Yes ^{xxxi}
Verizon Wireless	Prorates new and renewed 1 & 2 year consumer contracts. Fees decline each completed month of the contract (amounts vary by device) ^{xxxii}	30-day ^{xxxiii}	Follows CTIA Consumer Code	Yes ^{xxxiv}	Yes ^{xxxv}	Yes ^{xxxvi}	Yes ^{xxxvii} , dial #BAL for balance, #MIN for minutes balance, #DATA for text and data usage	Usage Controls - set allowances for voice and texts, and set times when calls, texts and data are restricted ^{xxxviii}	Yes ^{xxxix} /Yes ^{xl}	Yes ^{xli}	Yes ^{xlii}

	ETF policies	Trial period	Point of sale information/ documentation	Online, street-level coverage maps	Ability to change plan w/o contract extension	Ability to purchase service w/o a contract (prepaid)	Ability to check usage info/balance from web site, device	Post-paid plan bill shock preventative tools	Provides international roaming information/alerts	Ability to bring your own phone	Ability to pay full price for a handset and take service w/o a contract
Cricket Wireless	Pre-paid contracts only – No ETFs ^{xlili}	30-day ^{xliv}		Yes ^{xliv}	Yes ^{xlvi}	Yes ^{xlvi}	Yes ^{xlvi} , dial *PAY or *611 for account balance	No post-paid plans	International Roaming requires the purchase of roaming minutes, therefore overage is impossible ^{xlvi}	Yes ^l	Yes ^{li}
Metro PCS	Pre-paid contracts only – No ETFs ^{lii}	30-day ^{liii}		Yes ^{liv}	No annual contracts ^{lv}	Yes ^{lvi}	Yes ^{lvii} , dial *99 or 611 for account balance	No post-paid plans	Does not provide international roaming	Yes ^{lviii}	Yes ^{lix}
U.S. Cellular	Prorates consumer contracts beginning with the fifth month. ^{lx}	30-day ^{lxi}	Follows CTIA Consumer Code	Yes ^{lxii}	Yes ^{lxiii}	Yes ^{lxiv}	Yes ^{lxv} , dial #BAL (#225) for current balance, voice minutes and text messages	Overage Protection - set allowances for voice and text, alerts when subscriber is nearing or over limit ^{lxvi}	Yes ^{lxvii} /No	No ^{lxviii}	Yes ^{lix}
TracFone Wireless	Pre-paid contracts only – No ETFs ^{lxx}	30-day ^{lxxi}		By zip code only ^{lxxii}	Yes ^{lxxiii}	Yes ^{slxxiv}	Yes ^{lxxv} , voice balance and service end date displayed on device	No post-paid plans	Does not provide international roaming	No ^{lxxvi}	Yes ^{lxxvii}
SouthernLINC Wireless	Employs declining ETF balance fee structure ^{lxxviii}	15-day ^{lxxix}	Follows CTIA Consumer Code	No, regional and national maps and zip code query ^{lxxx}	Can change features and number of plan minutes. ^{lxxxi}	Yes ^{lxxxii}	Yes ^{lxxxiii} , dial #646 to hear how many peak and off-peak minutes you have used in your current billing period	N/A ^{lxxxiv}	Does not provide international roaming	Yes ^{lxxxv}	Yes ^{lxxxvi}

The competitive pressures noted above have recently produced several innovative customer service programs designed specifically to address billing concerns. For example, U.S. Cellular’s “Belief Project” offers a suite of initiatives designed to address consumers’ billing concerns.⁴⁴ As discussed *supra*, under U.S. Cellular’s “Overage Protection” program, consumers receive free text message alerts when they approach or reach their voice or text message limits. Its “Overage Cap” program, in turn, limits consumers’ exposure to overage fees, setting a \$50 cap for single line plans and a \$150 cap for family plans. Finally, its “Overage Forgiveness” program allows consumers to cash in their “Belief Points” for absolute forgiveness of any overage charge. Other carriers continue to proactively refine and improve their own customer service programs to keep pace with their competition and ensure consumer satisfaction.⁴⁵

Wireless carriers also continue to educate consumers about the myriad account management tools that are available and work proactively to ensure that consumers have sufficient information to select the appropriate voice, text, and data plan. And CTIA continues to reach out to consumers to keep them informed about all of the tools and resources provided by their wireless carriers.⁴⁶

⁴⁴ *The Belief Project*, U.S. Cellular, <http://www.uscellular.com/the-belief-project/index.html?a=bs&b=overage> (last accessed Dec. 28, 2010).

⁴⁵ See, e.g., Comments of Sprint Nextel Corporation, CG Docket No. 09-158, 15 (July 6, 2010) (stating that it continues “to revise [its] methods of sharing information with consumers” to ensure it “retain[s] customers and increase[s] customer satisfaction”) (“Sprint Nextel Bill Shock PN Comments”); Comments of T-Mobile USA, Inc., CG Docket No. 09-158, 9-10 (July 6, 2010) (stating that T-Mobile “is constantly assessing the value of additional mechanisms to keep consumers informed and pleased with” their service); Comments of Verizon Wireless, CG Docket No. 09-158, 18 (July 6, 2010) (describing its initiative to modify the design and content of its confirmation letters and pricing grids to improve customers’ understanding of its fees) (“Verizon Wireless Bill Shock PN Comments”).

⁴⁶ See, e.g., Christopher Guttman-McCabe, *Consumer Tip: How to Manage Your Wireless Account*, CTIA Blog (May 12, 2010), <http://www.ctia.org/blog/index.cfm/2010/5/12/Consumer-Tip-How-to- Manage-Your-Wireless-Account>; Christopher Guttman-McCabe, *CTIA’s Consumer Tips on International Travel: What Your Carrier Offers*, CTIA Blog (June 21, 2010), <http://www.ctia.org/blog/index.cfm/2010/6/21/CTIAs-Consumer-Tips-on-International-Travel-What-Your-Carrier-Offers>.

Several providers, such as Sprint Nextel, T-Mobile, Verizon, and AT&T, specifically offer tools that help consumers understand and quantify their data usage based on how they use their devices.⁴⁷ These tools guide consumers through different kinds of activities for which they may use their device, such as e-mail, web browsing, music streaming, video streaming, and online game play. They also provide instant feedback regarding the data demands of each activity. For example, Sprint Nextel provides examples of approximate file sizes (in kilobytes or megabytes) for e-mails, photos, music and movies and estimates of the number of those files that may be sent on a given usage plan while roaming or while on Sprint's network. T-Mobile's data calculator estimates data usage based on the daily number of e-mails sent or received; websites visited; and pictures, files, and documents sent in addition to daily time spent streaming music, video, and games. T-Mobile's calculator also displays approximately how many kilobytes or megabytes are used to send different types of files or to stream different types of content per minute. Verizon Wireless's calculator contains many of the same features as T-Mobile's but also allows users to specify whether they download high- or low-resolution video. AT&T's data calculator is similar to the calculators listed above in that it offers an interactive calculator and a static description of how much data are consumed by different activities. AT&T's calculator is distinct, however, in that it permits users to specify different types of e-mail use (with or without attachments), to enter their usage estimates based on daily or monthly use, and to specify the average number of social media posts made per day or month.

⁴⁷ See, e.g., Sprint Nextel, *Here's what you can do with 5GB or 300MB of data a month*, http://www.sprintrelaystore.com/broadband_card_info.htm (last accessed Jan. 5, 2011); *Estimate your monthly Web usage*, T-Mobile, <http://www.t-mobile.com/Tools/MBCalculator.aspx> (last accessed Dec. 28, 2010); *Data Usage Calculator*, Verizon Wireless, http://www.verizonwireless.com/other-0/splash_includes--datacalculator.html.shtml (last accessed Dec. 28, 2010); *Data Calculator*, AT&T, <http://www.att.com/standalone/data-calculator/index.html?wtSlotClick=1-003LI6-0-1&WT.svl=calltoaction&showNav=true> (last accessed Dec. 28, 2010).

Carriers are driven by competition on multiple levels to develop new and better account management tools, and to ensure that consumers are aware of and use those tools. Because these marketplace forces are inherently more effective and responsive than prescriptive regulations, the Commission should refrain from imposing new mandates that will effectively limit carriers' ability to provide effective consumer account management tools.

C. Congress and Federal Agencies Have Not Considered Prescriptive Consumer Alerts to Be Necessary in Other Areas Involving Overages.

Another indication that the Commission's consumer alert proposal would be an unjustified, overly prescriptive mandate can be found by contrasting it to what Congress and Federal agencies have deemed appropriate consumer protection measures in other contexts where consumers can incur additional costs as a result of "overages." In 2009, Congress passed the CARD Act in part to address concerns that consumers were incurring unexpected fees from credit card issuers when they exceeded their credit limit.⁴⁸ The CARD Act requires that, prior to charging any "over-the-limit" fee, card issuers must now obtain a one-time opt-in consent from the consumer, at which time the fee would be disclosed by the card issuer and acknowledged by the consumer.⁴⁹ Neither the CARD Act nor the implementing regulations of the Federal Reserve's Board of Governors requires that the disclosure of the fee be made just before a consumer reaches his credit limit.⁵⁰ Once the opt-in consent has been obtained, the fee may be charged anytime thereafter, even if no consumer transaction triggers a fee until years later.

The Federal Reserve adopted a similar opt-in rule with regard to debit and ATM card account overdraft fees imposed by banks. After conducting a rulemaking proceeding to consider

⁴⁸ Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24 (2009) ("CARD Act").

⁴⁹ *Id.* § 102. If the consumer does not opt-in, the card issuer may choose to decline a transaction that would exceed the consumer's credit limit.

⁵⁰ The overlimit rule is codified at 12 C.F.R. § 226.56.

what consumer protection measures would be appropriate in this context, the Board of Governors amended its Regulation E to require banks to obtain one-time consumer consent to the bank's overdraft fees.⁵¹ As in the credit card context, banks are not expected to warn consumers repeatedly when the risk of an overdraft charge becomes imminent based on a low account balance.⁵² Note that the notice required in each of these cases is provided so that the consumer understands that they will incur an additional fee if they go over their limit. In the wireless context, consumers already are told at multiple times in numerous places that they will be charged an additional amount if they go over their allotted voice, text or data plans.

In yet another context, even the federal government's own Medicare Part D prescription drug program doesn't warn consumers when they are about to exceed their annual prescription drug limit and enter the Part D coverage gap or "donut hole" that exists before beneficiaries reach Medicare's catastrophic coverage threshold. Once in the donut hole, the beneficiary's out-of-pocket cost for a prescription can more than double.⁵³ Under rules adopted by the Centers for Medicare & Medicaid Services ("CMS"), the only ongoing notification requirement imposed on Medicare Part D plan sponsors is that they mail a monthly explanation of benefits ("EOB") for months during which a beneficiary has utilized his or her Part D prescription

⁵¹ See 12 C.F.R. § 226.56. Notably, the new regulations do not apply to check or automatic bill payment overdrafts; banks may continue to charge overdraft fees without obtaining prior consumer consent.

⁵² Overdraft fees are not insignificant. The Federal Reserve indicates that fees are typically \$20-30 for *each* transaction that exceeds the available funds. See *New Overdraft Rules for Debit and ATM Cards*, Board of Governors of the Federal Reserve System (June 22, 2010), *available at* www.federalreserve.gov/consumerinfo/wyntk_overdraft.htm.

⁵³ Previously, the out-of-pocket expense under a standard Part D benefit design increased from 25% to 100% upon entering the donut hole. Starting in 2011, beneficiaries in the donut hole will receive a 50% discount on the cost of brand name pharmaceuticals, but only a 7% discount on generics; these discount amounts will increase to 75% by 2020.

drug benefits.⁵⁴ CMS rules do not require that the plan sponsor provide any kind of special notice to beneficiaries regarding their out-of-pocket spending status at or around the time that the beneficiary makes a drug purchase that ultimately pushes the beneficiary into the Part D coverage gap. Of course, as in the wireless context, beneficiaries may easily check their current out-of-pocket spending status at any time by calling their plan sponsor.

The approaches adopted by Congress and federal agencies in the contexts described above implicitly recognize that consumers have both the ability and responsibility to monitor their own accounts to avoid various types of “over the limit” expenses. Wireless carriers provide their subscribers with tools for monitoring their accounts that are equal or superior to those offered by financial institutions and Medicare Part D plan sponsors, and there is no reason to think that consumers are less capable of managing their wireless accounts than these other accounts.

IV. THE COMMISSION’S “BILL SHOCK” CONCERNS DISTORT THE FACT THAT WIRELESS CONSUMERS ARE SATISFIED WITH THEIR WIRELESS SERVICE.

As demonstrated in the record, in part through government-sponsored surveys, wireless consumers are satisfied with their wireless service, their wireless service providers, and their providers’ responsiveness to billing concerns. This is not surprising, as intense competition over the past twenty years has resulted in enormous growth in the scope and quality of services offered by providers, while consumers’ average monthly bill has been cut in half during that same period.⁵⁵ In search of a “bill shock” problem, however, the *NPRM* mischaracterizes flawed

⁵⁴ CMS Manual System, Pub. 100-16, Medicare Managed Care, Chapter 3, Medicare Marketing Guidelines, section 30.11.

⁵⁵ *Big Numbers, Small Numbers*, Forbes (Dec. 14, 2010), <http://blogs.forbes.com/econmatters/2010/12/14/big-numbers-small-numbers/> (noting that the average monthly bill has declined from \$83.94 to \$47.47 since 1990, and attributing the decreasing customer bills

data and does not accurately reflect the extent or magnitude of consumers' experiences with overages, disregards the broad array of available account management tools and billing resolution processes, and distorts the level of consumer satisfaction.

Plan overages and "bill shock" are not a problem for the vast majority of wireless consumers. When they do occur, overages are often small. This is confirmed by the information submitted in the record by The Nielsen Company after reviewing and analyzing over 65,000 wireless bills each month.⁵⁶ Moreover, overages very often are minimized further by wireless providers through credits or other accommodations. As discussed below, providers continue to enhance their customer service performance to retain customers and reduce churn – including by resolving billing issues effectively.

A. Extensive Evidence Confirms that Consumers are Satisfied with Their Wireless Service, and that Wireless Providers are Responsive to Consumer Billing Issues.

Numerous studies have established that wireless consumers are overwhelmingly satisfied with their wireless service, and when consumers have concerns with their wireless service, wireless providers act quickly to resolve them. Indeed, the Commission's own "*Bill Shock*" Survey revealed that 92 percent of wireless consumers are very or somewhat satisfied with their wireless service overall.⁵⁷ Similarly, the Government Accountability Office ("GAO") conducted a study to measure consumers' satisfaction with their wireless service, the problems they had

to competition, "which has forced the wireless carriers to pass on to consumers most of the difference between what it costs to deliver the services and what they are worth").

⁵⁶ See *infra* Section IV.B.

⁵⁷ *FCC Survey Finds 4 Out Of 5 Americans Don't Know Their Broadband Speeds*, FCC News Release, 3 (rel. June 1, 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298525A1.doc; *FCC Survey Confirms Consumers Experience Mobile Bill Shock And Confusion About Early Termination Fees*, FCC News Release and Survey (rel. May 26, 2010) ("*Bill Shock*" Survey).

encountered with their service, and the industry's response to their problems.⁵⁸ GAO found that "overall, wireless phone service consumers are satisfied with the service they receive,"⁵⁹ and 84 percent of adult wireless consumers are very or somewhat satisfied with their wireless phone service.⁶⁰

Other studies confirm the Commission's and GAO's findings that consumers are satisfied with their wireless providers and their providers' responsiveness to their concerns, and that they continue to improve. For example, the American Customer Satisfaction Index ("ACSI") found in May 2010 that consumer satisfaction has increased for a second consecutive year, setting a new all-time high for the wireless industry.⁶¹ ACSI also noted that wireless providers are "ramping up efforts to provide new services, simplified usage plans, and better pricing."⁶² And a J.D. Power and Associates' ("J.D. Power") study revealed that consumers gave the customer care performance of their wireless providers a score of 748 out of 1,000, an average of 13 points higher in 2010 than they did in August 2009 (the last time the study was conducted).⁶³ J.D. Power credited this improvement, in part, "to a focus by the wireless carriers to resolve issues

⁵⁸ GAO, *Report to Congressional Requesters - FCC Needs to Improve Oversight of Wireless Phone Service* (Nov. 2009) ("GAO Report"), available at <http://www.gao.gov/new.items/d1034.pdf>.

⁵⁹ *Id.* at 8.

⁶⁰ *Id.* GAO also found that wireless providers were responsive to consumer concerns. See GAO, *Testimony Before the Committee on Commerce, Science, and Transportation, United States Senate: Preliminary Observations about Consumer Satisfaction and Problems with Wireless Phone Service and FCC's Efforts to Assist Consumers with Complaints* (June 17, 2010), available at <http://www.gao.gov/new.items/d09800t.pdf>.

⁶¹ *ACSI Commentary May 2010*, American Customer Satisfaction Index (May 18, 2010), http://www.theacsi.org/index.php?option=com_content&task=view&id=216&Itemid=230.

⁶² *Id.*

⁶³ *2010 Wireless Customer Care*, J.D. Power and Associates, <http://www.jdpower.com/telecom/articles/2010-Wireless-Customer-Care-Volume-1/> (last accessed Dec. 26, 2010).

during the customer's first contact."⁶⁴ This trend has continued throughout 2010, and consumers' ratings of their wireless providers' customer care performance have increased an additional five points to 753 out of 1,000.⁶⁵ Thus, wireless providers are constantly striving to improve their responsiveness and effectiveness on customer care issues, reflecting the intense competition within the industry.

Wireless providers' commitment to resolving consumer issues also is evidenced by the Better Business Bureau's report that wireless providers resolved nearly all complaints by consumers in 2009 – 97.4 percent.⁶⁶ This represents a 2.1 percent improvement over the previous year.⁶⁷

B. The *Bill Shock Survey* and the *NPRM* Misrepresent the Frequency and Severity of Overages and Overlook Wireless Providers' Effective Responses to Billing Issues.

The Commission's conclusions drawn from the "*Bill Shock*" Survey do not accurately reflect the frequency and severity of billing overages. For instance, The Nielsen Company⁶⁸

⁶⁴ *Id.*

⁶⁵ *Wireless Customers are Contacting Their Service Providers Through Retail and Online Channels with Increasing Frequency*, J.D. Power and Associates (July 29, 2010), <http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010144>.

⁶⁶ *Complaints to Better Business Bureau Up Nearly 10 Percent in 2009*, BBB: News Center (Mar. 8, 2010), <http://www.bbb.org/us/article/complaints-to-better-business-bureau-up-nearly-10-percent-in-2009-18034>.

⁶⁷ *Id.* Separately, the GAO Report found that 71 percent of respondents were very or somewhat satisfied with how their wireless provider resolved their issue the last time they contacted their provider. GAO, *Surveys of Consumers and of State Utility Commissions about Wireless Phone Service*, GAO-10-35SP (Nov. 2009), an E-supplement to GAO-10-34, available at <http://www.gao.gov/special.pubs/gao-10-35sp/index.html>. The GAO's methodology, however, was not limited to providers' resolution of issues related specifically to billing, as many respondents reported having called their provider regarding handset or other wireless device functionality or call quality, which may not be as amenable to quick resolution as are billing issues.

⁶⁸ Founded in 1923, Nielsen is a global leader in mobile measurement and information analytics. It is headquartered in New York and active in approximately 100 countries. See *A World of Insights*, The Nielsen Company, <http://www.nielsen.com/content/corporate/global/en.html> (last accessed Dec. 30, 2010).

(“Nielsen”) – a leading provider of data and insights into the mobile marketplace – analyzed over 65,000 actual customer bills from the third quarter of 2009 to the second quarter of 2010.

Importantly, the study found that customers who regularly experience overages are also the ones most likely to have the highest overage amounts.⁶⁹ Nielsen concluded that such consumers “are unlikely to be surprised by their overages regardless of the amount.”⁷⁰ These customers have multiple opportunities in a year to change their plans, yet choose not to act. It also concluded that the distribution of overages for both data and voice customers indicate that those who experience repeated overages, and consequently pay the highest overage amounts, often make “a conscious choice.”⁷¹ Thus, there is a question of whether these overages are, in fact, a “shock.”

Not only does the fact-based Nielsen data demonstrate that consumers rarely experience severe overages, they also provide additional concrete evidence of the wireless industry’s responsiveness to consumer issues related to overages. Specifically, Nielsen found that customers who incur overage charges receive larger bill credits than customers who do not incur such charges.⁷² In fact, customers who incur data or voice overages receive approximately the same amount as a credit from their providers.⁷³ Thus, Nielsen’s analysis of actual customer bills demonstrates that “bill shock” is not a frequent occurrence and that wireless providers are responsive to such issues when they arise.

The Nielsen data are compelling. Unlike the *Bill Shock* Survey, the data were collected from actual monthly bills, not from consumers’ potentially flawed recollections of past billing

⁶⁹ *Id.* at 7-9, 11.

⁷⁰ *Id.* at 9.

⁷¹ *Id.*

⁷² *Id.* at 14.

⁷³ *Id.* at 15.

cycles.⁷⁴ The data are comprehensive and precisely identify when overages occur, how frequently overages occur, the magnitude of any overages that occur and the amounts of credits given by providers.⁷⁵ The data are also accurately representative of wireless consumers, as the sample was benchmarked against U.S. Census Bureau demographics, carrier market share, penetration of family plans, and the penetration of smartphones.⁷⁶ In addition, the data are derived from a very recent statistical period – the second half of 2009 and the first half of 2010 – and captures an accurate snapshot of the present state of overages experienced by wireless voice and data consumers, while excluding years-old consumer issues that have long since been addressed by wireless providers.⁷⁷

In contrast, the Commission’s “*Bill Shock*” Survey (and the conclusions that the *NPRM* draws from that survey), which relies on data derived from a survey that neither establishes a timeframe for the increase in the bills nor confirms whether in fact it was a “shock,” fails to account for how wireless providers respond to and resolve consumers’ overage issues, and does not address whether consumers were satisfied with the responses they received from providers. This is extremely important not only to make sure that the Commission is basing its decision on a record that is robust and factually correct, but also because the Commission is considering imposing rules that ultimately will cost U.S. consumers millions of dollars based on this record. Indeed, several of the Commission’s principal conclusions are not supported by the “*Bill Shock*” Survey because key data supporting those conclusions were never collected. For example, the “*Bill Shock*” Survey did not ask whether any consumers had actually experienced “bill shock,”

⁷⁴ *Id.* at 2-3.

⁷⁵ *Id.* at 2.

⁷⁶ *Id.* at 3.

⁷⁷ *Id.* at 6.

did not ask whether a “sudden” bill increase was expected or not, and did not ask whether a consumer’s wireless provider had resolved the billing issue to their satisfaction. Again, these questions are important because they lie at the core of the Commission’s basis for action. The Commission’s “*Bill Shock*” Survey also suffers further from deficiencies common to many self-report survey methods, including the inherent limitations of participants’ memories, the difficulties in ensuring that participants are qualified to respond, and inconsistencies in the sequencing and structuring of survey questions that tends to bias participants’ responses.⁷⁸

Even if the methodological problems with the Commission’s “*Bill Shock*” Survey are set aside, the data from that survey do not support the Commission’s conclusions. In instances where the Commission collected the pertinent information, several of its conclusions misinterpret the data. For example, the Commission’s conclusion that 30 million Americans experienced “bill shock” depends on the assumption that an overage as little as \$1 would cause consumer “shock.” And although the Commission acknowledged the plethora of usage monitoring tools made available by wireless providers, it nonetheless concluded that “the protections against bill shock that are currently afforded by providers have proven insufficient for many consumers.”⁷⁹ This conclusion was based, in part, on “the Commission’s own complaint data which indicate that large numbers of mobile customers continue to experience bill shock each month.”⁸⁰ Put in context, the 1,500 consumers that complained to the FCC represent **five ten-thousandths of one percent (0.005 percent)** of all wireless subscribers. The Commission’s billing- and rate-related complaints have hovered between 34 and 63 per million wireless subscribers per year over the

⁷⁸ See, e.g., Verizon Wireless Reply Comments, CG Docket 09-158, 6-8 (July 20, 2010).

⁷⁹ *NPRM* ¶ 2.

⁸⁰ *Id.* Specifically, the Commission states that it receives “bill shock complaints at a rate of about 1,500 per year,” which it notes is comparable to the complaint volume for “mystery fees” and “early termination fees.”

last five (5) years, and as of year-end 2009, complaints amounted to 48 per million wireless subscribers. For the first quarter of 2010 (the most recent data available), billing- and rate-related complaints amounted to 13 per million wireless subscribers.

The Nielsen study, moreover, provides helpful insight into the Commission's "*Bill Shock*" Survey data. For example, the "*Bill Shock*" Survey asked consumers if they had experienced increases in their bill, but it did not probe consumers to determine whether those increases were expected or not. The Nielsen data, by contrast, indicated that for many such consumers, and especially those experiencing the highest overages, such increases were expected and occurred repeatedly, reflecting, at least in part, consumers' conscious decision-making.⁸¹ Thus, the Commission's own data suggests that, consistent with the findings of the Better Business Bureau, Nielsen, and other independent organizations mentioned above, wireless providers effectively respond to consumer issues related to "sudden" bill increases.

In sum, numerous studies, including the Commission's *Bill Shock Survey*, have established that consumers are satisfied with their wireless provider, and that when they have concerns, providers are increasingly responsive to their needs. They also show that overages overwhelmingly involve small amounts and are routinely resolved by wireless providers through credits and other accommodations. Providers take seriously the need to address overages and provide consumers with tools to monitor their accounts. Instead of imposing new usage alert mandates, the Commission should continue to focus on educating wireless consumers while wireless providers compete aggressively to improve their customers' experience and reduce the occurrence of unexpected overages.

⁸¹ Nielsen Comments, Attachment at 7-9, 11.

V. THE COMMISSION’S PROPOSED RULES WOULD CREATE SUBSTANTIAL IMPLEMENTATION CHALLENGES FOR CARRIERS, TO THE DETRIMENT OF CONSUMERS AND THE PUBLIC INTEREST.

The Commission’s far-reaching proposals in the *NPRM* raise a number of complex technical, economic, and factual issues⁸² and would create substantial implementation challenges – especially with respect to “real-time” alerts – affecting CTIA’s members and companies across the wireless ecosystem, including carriers, billing and customer support vendors, app developers, and equipment providers. As explained above, consumers overwhelmingly are happy with their wireless service. Tools and procedures designed to help customers manage their accounts continue to evolve. Thus, to avoid disrupting this continued innovation and the introduction of such tools, and to avoid imposing significant new costs that must ultimately be paid by consumers, the Commission should not adopt new usage alert and disclosure mandates.

The proposed one-size-fits-all rules would impose significant technical challenges and costs on carriers (large and small) by requiring them to modify their existing customer notification practices.⁸³ As the Commission recognizes in the *NPRM*, mobile providers will need to “revise their existing systems” to implement mandatory usage alerts for all subscribers.⁸⁴ For example, carriers (and their billing and customer support vendors) would have to restructure their billing systems to accommodate the specific service alert framework imposed by the Commission. Some billing systems are not equipped to handle outbound usage alerts and would need to be overhauled or replaced entirely.⁸⁵ Customer support systems similarly would need to be upgraded to address customer response to the new alerts. The cost of these billing system,

⁸² See *NPRM* ¶¶ 20-25.

⁸³ See, e.g., Sprint Nextel Bill Shock PN Comments at 15; Comments of the Rural Cellular Association, CG Docket No. 09-158, 5 (July 6, 2010) (“RCA Bill Shock PN Comments”).

⁸⁴ See *NPRM* ¶ 23.

⁸⁵ See RCA Bill Shock PN Comments at 5.

customer support, and network upgrades would inevitably be passed on, raising prices to consumers.⁸⁶

In addition, many carriers would have to implement extensive network upgrades throughout their service area to address technical challenges to providing recurring usage alerts by SMS or voice on the scale proposed by the Commission. The particular challenges faced by carriers would vary due to differences in each carrier's network architecture, billing systems, and customer support mechanisms, and these variations would further complicate the alert implementation and remove the possibility of any economies of scale from an industry-wide mandate. Each type of alert also would pose unique problems.

“Real-Time” Alerts. “Real-time” alerts pose a number of technical and implementation issues.⁸⁷ As an initial matter, the Commission has not proposed a specific definition or provided guidance on what would qualify as a “real-time” alert. As CTIA previously discussed in this proceeding, any consideration of “real-time” alerts for voice, SMS, or data services must account for the technical characteristics and limitations of current technologies that could be used to deliver alerts, such as voicemail and short message service (“SMS”).⁸⁸ As explained below, SMS is a “store and forward” information service. There could be delays in the transmission of the alerts due to network congestion (including delays outside the carrier's control). There also could be a time lag before a subscriber actually receives the alerts if the subscriber's device is not powered on or configured correctly to receive messages and voicemail notifications. And

⁸⁶ See, e.g., *id.* at 6.

⁸⁷ *NPRM* ¶ 20 (seeking comment on whether the FCC should require carriers to provide usage notifications in “real time”).

⁸⁸ Comments of CTIA – The Wireless Association®, CG Docket No. 09-158, 19 (July 6, 2010) (“CTIA Bill Shock PN Comments”).

regardless of when an alert is delivered, the recipient simply may not access the voicemail or SMS messages until a later time when it is too late to prevent overage charges.

The concept of “real-time” alerts poses additional challenges for data services. Although many carriers may receive voice and SMS usage information about their subscribers throughout the day, data traffic usage is not processed and updated in real-time.⁸⁹ Thus, in some instances, meaningful data alerts may not be transmitted and received before subscribers incur overages.

Roaming. Carriers face additional obstacles in providing ongoing roaming alerts.⁹⁰ For example, domestic roaming usage information is often not available to the home carrier in real time.⁹¹ As a result, carriers may have no visibility or advance warning with respect to a roaming customer who is about to download a large data file. International roaming usage information is subject to an even longer delay – so long in fact that roaming usage may not show up on a subscriber’s bill within the same billing cycle as the usage.⁹² Roaming billing records are transmitted by the visited carrier, not the home carrier, and are not within the home carrier’s control. Thus, any requirement to provide “real-time” or similar roaming alerts could cause carriers to limit their roaming arrangements with roaming partners that cannot provide sufficiently timely roaming usage information, thereby reducing service and coverage options available to consumers.

⁸⁹ See, e.g., Comments of Ericsson Inc, CG Docket No. 09-158, 6 (July 6, 2010).

⁹⁰ *NPRM* ¶ 22.

⁹¹ See, e.g., Verizon Wireless Bill Shock PN Comments at 2.

⁹² See, e.g., *Wireless Customer Agreement*, AT&T, <http://www.wireless.att.com/cell-phone-service/legal/plan-terms.jsp> (last accessed Dec. 23, 2010) (“Calls placed on networks served by other carriers may take longer to be processed, and billing for these calls may be delayed . . . Billing for domestic and international roaming usage may be delayed up to three billing cycles due to reporting between carriers.”); CTIA Bill Shock PN Comments at n.27.

Disability Issues. The numerous account management tools mentioned above are already accessible to persons with disabilities via built-in accessibility features on mobile devices and smartphone applications.⁹³ For example, account management tools are often available in text-based formats that are accessible to the deaf or consumers with hearing loss, and they can be used with screen readers, text-to-speech, or text magnification tools to make them accessible to the blind or consumers with low vision.⁹⁴ Consumers also can contact carriers' accessible customer service hotlines for account management information.

VI. THE COMMISSION LACKS AUTHORITY TO ADOPT THE PROPOSED RULES.

The Commission does not have authority under the Communications Act to mandate that wireless carriers provide usage alerts and other information disclosures related to SMS and wireless broadband data services. These services constitute information services. For SMS services, messages are routed through what is known as a short message service center ("SMSC"), which houses computers that store, process, and transform SMS messages. Among other things, the SMSC stores the SMS message until the recipient's device is ready to receive it, after which the SMSC retrieves and forwards the message. Accordingly, as explained below, the Commission lacks authority to require usage alerts and other information disclosures – particularly delivered via SMS – related to SMS and broadband data usage under Titles I, II or III of the Act.

Moreover, such requirements – whether applicable to voice or SMS and data services – would violate the First Amendment because they are unduly burdensome and are not justified by the record in this proceeding. For these reasons, the Commission should not adopt its proposed

⁹³ CTIA Bill Shock PN Comments at n.14 (internal citations omitted).

⁹⁴ *Id.*

usage alert and information disclosure requirements. It should, however, remove existing regulatory uncertainty by reaffirming carriers' ability under the Telephone Consumer Protection Act to provide voluntary alerts to consumers.

A. Title III of the Communications Act Does Not Authorize the Commission to Mandate that Wireless Carriers Provide Usage Alerts and Other Information Disclosures to Data and SMS Subscribers.

The Commission does not have authority under Title III to require wireless carriers to provide usage alerts and other information disclosures to data and SMS subscribers. Specifically, Section 332(c) prohibits the Commission from imposing such requirements on non-common carrier services. And even if there was no prohibition, the other provisions of Title III do not grant the Commission authority to impose its proposed rules.

1. Section 332(c) Prohibits the Commission From Imposing Common Carrier “Bill Shock” Obligations on Wireless Broadband Internet Access Services and SMS.

The proposed industry-wide usage alert and information disclosure requirements would be Title II common carrier obligations. Like the Commission's truth-in-billing rules, the proposed “bill shock” mandates would be designed to assist consumers in understanding their bills and reduce the potential for unexpected mobile charges.⁹⁵ When it adopted the common carrier truth-in-billing requirements, the Commission noted that it has “jurisdiction under Title II to regulate the manner in which a carrier bills and collects for its services”⁹⁶ It also stated that the truth-in-billing rules would “deter carriers from engaging in unjust and unreasonable practices in violation of section 201(b).”⁹⁷ The Commission's authority, however, to require

⁹⁵ See, e.g., *NPRM* ¶ 5; *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 ¶ 20 (1999).

⁹⁶ See *id.* ¶ 25; see also ¶ 21 (citing as authority Sections 201(b) and 258(a)).

⁹⁷ See *id.* ¶ 24. See also *id.* ¶ 25 (stating that “[b]illing, like all other practices for and in connection with interstate service, must be just and reasonable”); 47 C.F.R. § 64.2401.

wireless carriers to provide usage alerts and other information disclosures related to SMS and wireless broadband data services is distinguishable.

Section 332(c) limits the Commission's ability to impose these types of common carrier requirements. It states that for mobile services, common carrier obligations may be imposed only on services that constitute a "commercial mobile service" (*i.e.*, CMRS), defined as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) such classes of eligible users as to be effectively available to a substantial portion of the public."⁹⁸ Nothing in other portions of the Act overrides this express prohibition. Although voice services are considered CMRS, and therefore subject to common carrier obligations, wireless broadband data services and SMS are not. Therefore, the Commission is prohibited from promulgating "bill shock" rules that would apply to those services.

The Commission has previously held that wireless broadband Internet access service is not CMRS.⁹⁹ Specifically, it found that the service is not an "interconnected service" within the meaning of Section 332 and the Commission's CMRS rules because it does not "give subscribers the capability to communicate to or receive communications from all other users on the public switched network."¹⁰⁰ Thus, pursuant to the express terms of Section 332(c), the Commission's "bill shock" proposals cannot be extended to wireless broadband Internet access services. The

⁹⁸ 47 U.S.C. § 332(d)(1).

⁹⁹ *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 ¶ 45 (2007) ("*Wireless Broadband Declaratory Ruling*").

¹⁰⁰ *See id.* The term "interconnected service" is defined as "a service that is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network" 47 C.F.R. § 20.3.

Commission also found that wireless broadband Internet access service is an “information service” under the Act and, therefore, not subject to Title II common carrier requirements.¹⁰¹

SMS services also are not CMRS.¹⁰² Like wireless broadband Internet access services, SMS services are not “interconnected services” under Section 332 and the Commission’s CMRS rules. Notably, they do not “give subscribers the capability to communicate to or receive communications from all other users on the public switched network.”¹⁰³ SMS messages are not transmitted on the public switched telephone network (“PSTN”) (unlike CMRS voice services). Moreover, they are transmitted primarily between mobile phones and do not offer subscribers the capability of communicating with all other PSTN users. Thus, Section 332(c) also precludes the Commission from extending new bill shock rules to SMS services.

Under the same logic, the Commission lacks authority to require that wireless carriers provide SMS usage alerts for voice services.¹⁰⁴ Just as the FCC does not have authority to promulgate “bill shock” rules that would apply to SMS services, it cannot mandate that notifications for voice minute usage be sent via SMS.

2. Separate From the Prohibition in Section 332(c), the Commission Does Not Have Authority Under Title III to Impose its “Bill Shock” Proposals on Data or SMS Services.

As discussed above, Section 332(c) expressly prohibits the Commission from promulgating new usage alert and information disclosure requirements for wireless broadband and SMS services. Even if there was no express prohibition, however, the Commission would

¹⁰¹ *Wireless Broadband Declaratory Ruling* ¶¶ 22, 41.

¹⁰² *See, e.g.,* Comments of CTIA – The Wireless Association®, WC Docket No. 08-7, 40-44 (filed Mar. 14, 2008).

¹⁰³ 47 C.F.R. § 20.3.

¹⁰⁴ *See NPRM* ¶ 20.

lack authority under Title III to impose those requirements on wireless broadband data services and SMS services.

In the *NPRM*, the Commission discusses several provisions of Title III that it believes provide authority to establish license conditions in the public interest.¹⁰⁵ None of these provisions, however, grant authority for the Commission to adopt its bill shock proposals on wireless broadband data services and SMS services. For example, Section 301 grants the Commission subject matter authority to regulate “radio communications” and the “transmission of energy by radio.”¹⁰⁶ As the D.C. Circuit held in *Comcast*, however, such grants of subject matter authority do not confer authority to adopt any specific regulations.¹⁰⁷ Section 303(r) similarly does not contain an independent grant of regulatory authority; it only authorizes rules where the Commission has separate authority and where such rules are “not inconsistent with the law.”¹⁰⁸

The Commission also references Sections 307(a) and 316 as possible sources of authority for its bill shock proposals.¹⁰⁹ These sections are inapplicable, however. Section 307(a) authorizes the issuance of licenses “if public convenience, interest, or necessity will be served thereby”¹¹⁰ and has effect only before a license is granted. In this proceeding, the Commission proposes to extend usage alert and information disclosure requirements to existing wireless licensees and service providers. And Section 316 provides authority to modify licenses, but it is

¹⁰⁵ *NPRM* ¶ 27.

¹⁰⁶ 47 U.S.C. § 301.

¹⁰⁷ *Comcast Corp. v. FCC*, 600 F.3d 642, 647-49 (D.C. Cir. 2010).

¹⁰⁸ 47 U.S.C. § 303(r).

¹⁰⁹ *NPRM* ¶ 27.

¹¹⁰ 47 U.S.C. § 307(a).

concerned with individual licenses and licensee action, not broad rulemaking proceedings.¹¹¹

For that reason, it includes certain individualized licensee protections such as written notification, a reasonable opportunity to protest, and potentially a hearing.¹¹² Both Section 307(a) and Section 316 are also too vague to be reasonably interpreted as providing authority for the Commission’s specific usage alerts and information disclosure proposals.

Although Section 303(b) authorizes the Commission, subject to what the “public interest, convenience, or necessity requires,” to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class,”¹¹³ this authority does not extend so far as to support the Commission’s “bill shock” requirements. Instead, Sections 303(a), (b), and (c) grant authority for the Commission to identify spectrum to be allocated, designate the nature of services for those allocations, and assign the spectrum to classes of radio stations.¹¹⁴ Here, the Commission is not deciding allocation or assignment issues, or defining which services should be offered in a particular spectrum band; instead, it is determining (at most) how licensees offer information regarding their services and imposing new conditions on existing licensees. Thus, Section 303(b) is inapplicable to the Commission’s proposed rules.

B. The Commission Also Lacks Authority Under Titles I and II to Impose its Proposed Rules on Data and SMS Services.

Like Title III, Titles I and II do not provide sufficient authority for the Commission to adopt common carrier “bill shock” requirements for wireless broadband data services and SMS services.

¹¹¹ See, e.g., *WBEN, Inc. v. United States*, 396 F.2d 601, 618-19 (2d. Cir. 1968).

¹¹² 47 U.S.C. § 316.

¹¹³ *Id.* § 303(b).

¹¹⁴ See, e.g., *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, First Report and Order and Second Notice of Proposed Rulemaking, 10 FCC Rcd 4769, 4791 (1995).

Section 153(44) of the Act provides that a telecommunications carrier shall be treated as a common carrier and therefore regulated under Title II “only to the extent that it is engaged in providing telecommunications services.”¹¹⁵ As noted above, the Commission has already determined that wireless broadband Internet access services are information services regulated under Title I, not telecommunications services regulated under Title II. And as CTIA has previously explained to the Commission, SMS services are also information services subject to Title I of the Act.¹¹⁶ For example, SMS services contain all of the key characteristics of other services like email and voice storage and retrieval that have been classified as information services. They involve the storage and forwarding of message, data conversation, and data retrieval functions. Just as with email, SMS messages are not sent directly to the recipient, but rather to computers that store the data until it is ready to be received. SMS also offers the capability for “subscriber interaction with stored information,” consistent with other information services.¹¹⁷ In addition, computers regularly act on the form and content of an SMS message, and SMS messages routinely involve “address translation, protocol conversion [and] billing management.”¹¹⁸ Because wireless broadband Internet access services and SMS services are information services regulated under Title I, the Commission cannot subject them to the proposed Title II common carrier bill shock requirements.

¹¹⁵ 47 U.S.C. § 153(44).

¹¹⁶ See, e.g., Comments of CTIA – The Wireless Association®, WC Docket No. 08-7, 32-40 (filed Mar. 14, 2008). “Information service” is defined as a service that provides the “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” 47 U.S.C. § 153(20).

¹¹⁷ *Amendment of Section 64.702 of the Commission’s Rules and Regulations*, Final Decision, 77 FCC 2d 384 ¶ 97 (1980) (*Computer II*) (prior and subsequent history omitted); *United States v. W. Elec. Co.*, 1998 U.S. Dist. LEXIS 13536 (D.D.C. 1998) (finding time and weather information announcements to be information services) (subsequent history omitted).

¹¹⁸ See *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 ¶ 75 (1998) (*Stevens Report*).

The Commission also cannot use its ancillary jurisdiction under Title I to enact new “bill shock” mandates. As the D.C. Circuit recognized in *Comcast*, an assertion of ancillary jurisdiction must further a statutorily-mandated responsibility or specific Commission power found elsewhere in the Act.¹¹⁹ As demonstrated above, no such direct statutory responsibility exists. Moreover, the Commission cannot rely on ancillary jurisdiction to impose common carrier regulations on services that are expressly exempt from such regulation.¹²⁰ Here, wireless broadband Internet access services and SMS, as non-CMRS information services, are expressly exempt from common carrier regulation under both Section 332(c) and Section 153(44), as discussed above.

C. The Commission’s Proposal Violates Carriers’ First Amendment Protections.

The Commission’s proposal to compel carriers to provide specific usage alerts runs afoul of their First Amendment rights. The First Amendment protects against government compelled speech as well as outright prohibitions on speech; as the Supreme Court stated, “freedom of speech prohibits the government from telling people what they must say.”¹²¹ In the commercial speech context, the Supreme Court has held that the government may compel the disclosure of “purely factual and uncontroversial information” consistent with the First Amendment only if the disclosure requirements “are reasonably related to the State’s interest in preventing deception of

¹¹⁹ See *Comcast*, 600 F.3d at 646.

¹²⁰ *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700-01 (1979); see also *NARUC v. FCC*, 533 F.2d 601, 607 (D.C. Cir. 1976) (stating that courts must review “whether any statutory commandments are directly contravened” by the asserted ancillary jurisdiction) (internal citations omitted). In *Midwest Video*, the Supreme Court struck down a Commission Order imposing common carrier regulations on cable providers because of a provision in Section 3(h) of the Act that prohibits broadcasters from being deemed common carriers.

¹²¹ *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006).

consumers,” and are not “unjustified or unduly burdensome.”¹²² The Commission’s proposed requirements create an unjustified and undue burden on wireless carriers because of the significant implementation challenges and costs associated with the proposed requirements, and because wireless carriers have not misled consumers in any way that would justify the new mandates.

The Commission’s proposal would create an undue burden on carriers due to the extensive implementation challenges and costs described in Section IV above. Instead of tacking on a mandated disclosure to a message already in distribution,¹²³ the Commission’s proposal seeks to compel the creation of an entirely new message with 100% of its content being established by the Commission, and to impose the entire multimillion dollar cost of its distribution on the carriers. Such requirements go far beyond other compelled speech that has been struck down by the courts. For example, the Eleventh Circuit struck down a state statute that required “anyone who advertises workers’ compensation services on television” to include a five-second “video message [that] will take up somewhere between one third of the screen and the entire screen,” providing notice that making a false claim is a crime.¹²⁴ The court held that this created an undue burden, reasoning “[t]his undue burden is, in fact, not a trifling one. Mr. Tillman’s ads last thirty (30) seconds, and the State wants to share five (5) of them for its general

¹²² *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985); *see also Milavetz v. United States*, 130 S. Ct. 1324, 1339-40 (2010).

¹²³ Such compelled speech typically does not offend the First Amendment. *See Zauderer*, 471 U.S. at 651 (upholding a required disclosure to be added to advertisements); *Connecticut Bar Ass’n v. United States*, 620 F.3d 81, 101 (2nd Cir. 2010) (finding no heavy burden when plaintiffs are required to include an additional message in their communications); *United States v. Wenger*, 427 F.3d 840, 851 (10th Cir. 2005) (holding that a disclaimer imposes little burden when it only requires a publicist to disclose, in the course of producing a half-hour broadcast or multi-page newsletter, the amount of consideration he received).

¹²⁴ *Tillman v. Miller*, 1:95-cv-1594, 1996 WL 767477, *1 (N.D. Ga. Sept. 30, 1996) *aff’d*, 133 F.3d 1402 (11th Cir. 1998).

education message.”¹²⁵ If the government cannot dictate a small portion of a message (*i.e.*, five seconds out of thirty) without violating the First Amendment, it is unlikely that dictating 100% of a message would be constitutional.

In addition to being unduly burdensome, the proposal also is unjustified because the record fails to show that the required disclosures are directed at a harm caused by the carriers’ misleading statements or actions.¹²⁶ As discussed above in Sections III and IV, the overwhelming majority of consumers are satisfied with their wireless service, and carriers are vigorously competing to enhance their customer service offerings and provide substantial account management tools. Whereas courts may find that the First Amendment permits the government to compel speech as a remedy to fix a misleading or incomplete message,¹²⁷ carriers already make available to consumers all of the information they need to avoid and monitor overages.¹²⁸ Thus, by imposing both an undue and unjustified burden on carriers, the Commission’s proposal would impermissibly infringe their First Amendment rights.

D. The Commission Should Resolve the Existing Regulatory Uncertainty Over Carriers’ Ability to Provide Usage Alerts.

In addition to the legal and technical impediments mentioned above, there is also regulatory uncertainty over carriers’ ability to provide usage alerts to consumers. Specifically,

¹²⁵ *Tillman v. Miller*, 133 F.3d 1402, 1404 n.4 (11th Cir. 1998).

¹²⁶ *See Ibanez v. Florida Dep’t of Bus. & Prof’l Regulation*, 512 U.S. 136, 147 (1994) (stating that the state failed to “back up” its claim that the harm the required disclosures were meant to address was created by the speech at issue); *Tillman*, 1996 WL 767477, *4 (“a state must demonstrate that the harms to the public which are addressed by the compelled speech are fostered intentionally or inadvertently, by the underlying speech”) *aff’d*, 133 F.3d 1402 (11th Cir. 1998).

¹²⁷ *See Zauderer*, 471 U.S. at 651 (“The State has attempted only to . . . require[] that appellant include in his advertising purely factual and uncontroversial information about the terms under which his services will be available.”); *United States v. Schiff*, 379 F.3d 621, 630 (9th Cir. 2004) (holding that website operator may be compelled to post factual information about potential criminal liability if patrons utilized the illegal tax schemes posted on his website).

¹²⁸ *See supra* Section III.A.-B.

the Commission has proposed to require parties to obtain telephone subscribers' "prior express written consent" for all automated or prerecorded calls to wireless numbers (including SMS messages) as part of its open proceeding to harmonize its rules under the Telephone Consumer Protection Act ("TCPA")¹²⁹ with the Federal Trade Commission's Telemarketing Sales Rule.¹³⁰ If adopted, the proposed rules would thwart an existing exception from the Commission's TCPA restrictions that allows wireless carriers to provide free-to-the-end-user autodialed calls, prerecorded messages and text messages (*e.g.*, usage alerts) to their customers without the need for additional consent.¹³¹ Thus, the proposed TCPA rule changes would restrict the ways in which carriers can provide account information to their subscribers, to the detriment of consumers and contrary to the Commission's goals in this proceeding.¹³²

The Commission must resolve the pending TCPA proceeding before taking any action to require usage alerts. Importantly, it should reaffirm carriers' ability to provide voluntary usage alerts and other billing information directly to their subscribers without obtaining separate written consent.

VII. CONCLUSION

For the foregoing reasons, CTIA urges the Commission not to adopt new usage alert and information disclosure rules. Instead, the Commission should work with carriers and the

¹²⁹ 47 U.S.C. § 227 (2005).

¹³⁰ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, 25 FCC Rcd 1501 (2010).

¹³¹ *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 ¶ 45 (1992) (finding that Congress did not intend for the TCPA to prohibit free-to-the-end-user autodialed or prerecorded calls or messages from wireless carriers to their subscribers).

¹³² *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Comments of CTIA-The Wireless Association®, CG Docket No. 02-278 at 3-7 (June 21, 2010). *See also* CTIA Bill Shock PN Comments at 19-21.

wireless industry to educate consumers about the variety of account management tools that are already available.

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ⁱ <http://www.wireless.att.com/cell-phone-service/legal/return-policy.jsp> (last accessed December 15, 2010); for equipment-specific ETFs, see <http://www.wireless.att.com/learn/articles-resources/early-term-fees.jsp> (last accessed December 15, 2010).

ⁱⁱ <http://www.wireless.att.com/cell-phone-service/legal/return-policy.jsp> (last accessed December 15, 2010).

ⁱⁱⁱ See <http://www.wireless.att.com/coverageviewer/> (last accessed December 15, 2010).

^{iv} See <http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&solutionId=KB61945>, and <http://www.wireless.att.com/learn/basics/shopping-faqs.jsp#102> (both, last accessed December 15, 2010).

^v <http://www.wireless.att.com/cell-phone-service/go-phones/index.jsp> (last accessed December 15, 2010).

^{vi} <http://www.wireless.att.com/learn/basics/choosing-features-services/starservices.jsp>. To check from website, user can follow directions at

<http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&solutionId=KB61946> (must establish user name and password) (last accessed December 17, 2010).

^{vii} <http://www.wireless.att.com/learn/articles-resources/parental-controls/smart-limits.jsp> (last accessed December 15, 2010).

^{viii} See [www.att.com/global/Know Before You Go](http://www.att.com/global/KnowBeforeYouGo): <http://www.wireless.att.com/learn/international/roaming/know-before-you-go.jsp>; Verify Rates: <http://www.wireless.att.com/learn/international/roaming/international-roaming.jsp>; Travel Guide: <http://www.wireless.att.com/learn/international/roaming/travel-guide.jsp>; FAQ on International Roaming: <http://www.wireless.att.com/learn/international/roaming/faq.jsp> (All, last accessed December 15, 2010).

^{ix} <http://choice.att.com/flash/customersdevices.aspx> (last accessed December 15, 2010).

^x <http://www.wireless.att.com/learn/basics/shopping-faqs.jsp#106> (last accessed December 15, 2010).

^{xi} http://shop.sprint.com/en/services/termination_fee/early_termination_fee.shtml?ECID=vanity:etf (last accessed December 15, 2010).

^{xii} <http://www.sprint.com/landings/returns/> (last accessed December 15, 2010).

^{xiii} See <http://coverage.sprintpcs.com/IMPACT.jsp?PCode=vanity:coverage> (last accessed December 15, 2010).

^{xiv} http://support.sprint.com/support/article/Change_or_update_your_rate_plan_online/case-ye186054-20090922-102945 (last accessed December 15, 2010).

^{xv} <http://www.boostmobile.com/about/mediacenter/index.html> (last accessed December 15, 2010).

^{xvi} http://support.sprint.com/support/article/Get_information_about_your_account_by_phone/case-ib376964-20090626-132857. To check from website, user can watch “Check your usage” video at <http://sprint.com/landings/howto/>, and follow directions (must establish user name and password) (last accessed December 17, 2010).

^{xvii} http://support.sprint.com/support/article/Learn_about_the_Account_Spending_Limit_program/case-wh164052-20100120-111115 (last accessed December 15, 2010).

^{xviii} Information about traveling internationally with a Sprint phone:
http://shop.sprint.com/en/services/worldwide/travelabroad_sprint.shtml; International Voice:
<http://shop.sprint.com/en/services/worldwide/internationalcoverage.shtml>; International Data:
<http://shop.sprint.com/en/services/worldwide/internationalcoverage.shtml> (last accessed December 15, 2010).

^{xix} See http://nextelonline.nextel.com/en/legal/legal_terms_privacy_popup.shtml (last accessed December 15, 2010).

^{xx} Sprint Nextel offers prepaid plans with no long-term contract through the Sprint Prepaid Group, including Boost Mobile and Virgin Mobile USA. http://search.sprint.com/inquirapp/ui.jsp?ui_mode=question&charset=iso-8859-1&language=en-US&aisleToken=&user.status=prospect&user.site=onlinestore&question_box=prepaid (last accessed December 29, 2010).

^{xxi} http://www.t-mobile.com/Templates/Popup.aspx?WT.z_unav=ftr__TC&PAsset=Ftr_Ftr_TermsAndConditions&print=true (last accessed December 16, 2010).

^{xxii} *Id.*

^{xxiii} <http://www.t-mobile.com/coverage/pcc.aspx> (last accessed December 16, 2010).

^{xxiv} <http://support.t-mobile.com/doc/tm20003.xml> (last accessed Dec. 7, 2010) (although some promotional plans require customer to sign another service contract).

^{xxv} <http://www.t-mobile.com/shop/plans/Prepaid-Plans.aspx> (last accessed December 16, 2010).

^{xxvi} <http://support.t-mobile.com/doc/tm22239.xml?&navtypeid=2&pagetypeid=26&prevPageIndex=5>. To check from website, user can go to <https://my.t-mobile.com/Login/> (must establish user name and password) (last accessed December 17, 2010).

^{xxvii} <http://support.t-mobile.com/doc/tm24226.xml> (last accessed December 17, 2010).

^{xxviii} What to do before using your phone while traveling internationally: <https://support.t-mobile.com/doc/tm22038.xml?related=y&Referring%20Related%20DocID%20List%20Index=1&docid=694&navtypeid=6&pagetypeid=7&prevPageIndex=4>; International Roaming Information: http://www.t-mobile.com/International/RoamingOverview.aspx?tp=Intl_Tab_RoamWorldwide (last accessed December 16, 2010).

^{xxix} Once registered on foreign carriers’ networks, customers receive the following free text message alerting customer to check settings: “Free T-Mobile Msg: CAUTION: Charges while roaming are higher for voice, web, email & applications. Alter device settings or call +1-505-998-3793 for rates.”

^{xxx} <http://forums.t-mobile.com/t5/Rate-Plans/Bring-my-own-phone-to-an-Even-More-Plus-plan/m-p/297760> (last accessed December 16, 2010) (see number six).

^{xxxi} http://www.t-mobile.com/templates/generic.aspx?PAsset=Pro_Pro_InStoreOffers (last accessed December 16, 2010) (Even More Plus plans have no annual contract with phones sold at retail prices).

^{xxxii}

http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER_AGREEMENT&jspName=footer/customerAgreement.jsp (last accessed December 16, 2010).

^{xxxiii}

http://www.verizonwireless.com/b2c/globalText?textName=RETURN_POLICY&jspName=footer/returnPolicy.jsp (last accessed December 16, 2010).

^{xxxiv} <http://www.verizonwireless.com/b2c/CoverageLocatorController?requesttype=NEWREQUEST&market=All> (last accessed December 16, 2010).

^{xxxv} <http://news.vzw.com/news/2007/10/pr2007-10-01a.html> (last accessed December 16, 2010).

^{xxxvi} <http://www.verizonwireless.com/b2c/splash/prepay.jsp?lid=//global//plans//prepaid> (last accessed December 16, 2010).

^{xxxvii} http://support.vzw.com/clc/faqs/Features%20and%20Optional%20Services/faq_features.html?grp=1&faq=1. To check from website, user can log in at

<https://login.verizonwireless.com/amserver/UI/Login?realm=vzw&goto=https%3A%2F%2Fwbillpay.verizonwireless.com%3A443%2Fvzw%2Faccountholder%2Fmybill%2FBillingSummary.action> and log in (must establish user name and password) (last accessed December 17, 2010).

^{xxxviii} https://wbillpay.verizonwireless.com/vzw/nos/uc/uc_home.jsp (last accessed December 17, 2010).

^{xxxix} www.verizonwireless.com/global (last accessed December 16, 2010).

^{xl} Verizon Wireless sends a free text message to customers when they turn on their phone in a foreign country welcoming them to the country, providing dialing instructions for calling from that country back to the U.S., and sending them the 24/7 customer service number for global customers. If the customer is located in a CDMA country, Verizon Wireless also provides the customer with the data roaming rates for that country. Mobile Broadband customers using VZ Access Manager and operating their device outside of the U.S. must click-through a disclosure screen providing information about potential data charge rates before being allowed to connect.

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http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER_AGREEMENT&jspName=footer/customerAgreement.jsp (last accessed December 16, 2010) (see “My Wireless Device”); *see*

http://support.vzw.com/clc/faqs/Equipment/fa_phones.html (last accessed December 16, 2010).

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<http://www.verizonwireless.com/b2c/store/controller?item=phoneFirst&action=viewStoreIndex&lid=/global/phone-s+and+accessories> (Verizon’s online phone shop allows pricing options of 1 and 2 year contracts and month-to-month) (last accessed December 16, 2010); *see also* http://news.cnet.com/8301-1035_3-10048123-94.html (last accessed December 16, 2010).

^{xliii} *See*

<http://search.mycricket.com/?opt=ALL&index=432173&calln=3&lastq=%2B%28et+%2522et%27s%2522%29&query=early+termination>, results of site search for “early termination” (last accessed December 16, 2010).

^{xliv} <http://www.mycricket.com/support/return-policy> (last accessed December 16, 2010).

^{lv} *See* <http://www.mycricket.com/coverage/maps/wireless> (last accessed December 16, 2010).

^{lxvi} <http://www.mycricket.com/support/topic/Cricket-Wireless> (last accessed December 16, 2010).

^{lxvii} <http://www.mycricket.com/paygo/prepaid-mobile-phone-guide> (last accessed December 16, 2010).

^{lxviii} <http://www.mycricket.com/support/topic/Cricket-PAYGo-Account-Balance>. To check from website, user may log in at <https://account.mycricket.com/> (must establish user name and password) (last accessed December 17, 2010).

^{lxix} *See* <http://www.mycricket.com/support/topic/Roaming> (last accessed December 16, 2010).

^l <http://www.mycricket.com/support/topic/Purchasing-a-Cricket-Phone> (last accessed December 16, 2010).

^{li} <http://www.mycricket.com/cell-phones> (last accessed December 16, 2010).

^{lii} http://www.metropcs.com/customer_support/faq.aspx (last accessed December 16, 2010).

^{liiii} http://www.metropcs.com/customer_support/returnpolicy.aspx (last accessed December 16, 2010).

^{liv} *See* <http://www.metropcs.com/coverage/> (last accessed December 16, 2010).

^{lv} <http://www.metropcs.com/about/about.aspx> and <http://www.metropcs.com/plans/default.aspx> (last accessed December 29, 2010).

^{lvi} http://www.metropcs.com/customer_support/faq.aspx (last accessed December 16, 2010).

^{lvii} http://www.metropcs.com/products/mymetro/mymetro_guide.aspx. To check from website, user may log in at <https://login.metropcs.com/sso/login.aspx> (must establish user name and password) (last accessed December 17, 2010).

^{lviii} http://www.metropcs.com/customer_support/number_portability.aspx (last accessed December 16, 2010).

^{lix} <http://www.metropcs.com/about/about.aspx> and <http://www.metropcs.com/shop/phonelist.aspx> (last accessed December 29, 2010).

^{lx} <http://www.uscellular.com/site/legal/customer-service-agreement.html> (last accessed December 16, 2010).

^{lxi} <http://www.uscellular.com/uscellular/common/common.jsp?path=/site/legal/customer-service-agreement.html> (last accessed December 16, 2010).

^{lxii} <http://www.uscellular.com/uscellular/common/common.jsp?path=/coverage-map/index.html> (last accessed December 16, 2010).

^{lxiii} Customer service representative confirmed (called 1-888-944-9400 December 29, 2010).

^{lxiv} <http://www.uscellular.com/uscellular/plans/showPlans.jsp?type=plans&plan-selector-type=prepaid> (last accessed December 16, 2010).

^{lxv} <http://www.uscellular.com/support/customer-care/unbilled-minutes.html>. To check from Web, user can log in at <https://loginknx.uscc.com/nidp/idff/sso?id=33&sid=0&option=credential&sid=0> (must establish user name and password) (last accessed December 17, 2010).

^{lxvi} <http://www.uscellular.com/uscellular/common/common.jsp?path=/overage-protection/index.html> (last accessed December 16, 2010).

^{lxvii} <http://www.uscellular.com/uscellular/common/common.jsp?path=/services/international/index.html> (last accessed December 16, 2010).

^{lxviii} <http://www.uscellular.com/uscellular/support/faq/faqDetails.jsp?topic=number-portability.html#Q9> (last accessed December 16, 2010) (see number nine).

^{lxix} Customer service representative confirmed (called 1-888-944-9400 December 29, 2010). *See also* http://www.uscellular.com/uscellular/cell-phones/showPhones.jsp?type=phones&_requestid=1256110 (last accessed December 29, 2010).

^{lxx} http://www.tracfone.com/why_tracfone.jsp (last accessed December 17, 2010) (last accessed December 17, 2010).

^{lxxi} <http://www.tracfone-orders.com/bpdirect/tracfone/Start.do?action=view&market=GSM5AT> (last accessed December 17, 2010).

^{lxxii} http://www.tracfone.com/jsplib/verify_mapcov.jsp (last accessed December 29, 2010). Functionality appears to be available, but error message was received at time of testing.

^{lxxiii} <https://www.tracfone.com/direct/ValuePlans?app=TRACFONE&lang=en> (last accessed December 17, 2010) (click “Terms and Conditions”); general Terms & Conditions at http://www.tracfone.com/why_tracfone.jsp (click Terms & Conditions) (last accessed December 17, 2010).

^{lxxiv} *See generally* <http://www.tracfone.com/> (last accessed December 17, 2010).

^{lxxv} http://www.tracfone.com/phone_details.jsp?model=UCMTST_008119 (sample device description showing that Airtime Balance feature is part of device programming). To check from Web, user may log in at <https://www.tracfone.com/direct/MyAccount?app=TRACFONE&lang=en> (must establish user name and password) (last accessed December 17, 2010).

^{lxxvi} <http://www.tracfone.com> (last accessed December 17, 2010) (enter “FAQ” in the search box, then select a result that leads to FAQ page. Select “PROMOTIONS and SERVICES” from the left-hand menu. Click “Number Portability,” then “Will I be able to use my existing carrier’s equipment when I move to TracFone?”).

^{lxxvii} <http://www.tracfone-orders.com/bpdirect/tracfone/Start.do?action=view&market=GSM5AT&aid=&vid=&vc=&sahcid=&com=&zip=20009&locale=en&siteType=T R&gotoPhonelist=true&AID=> (last accessed December 17, 2010).

^{lxxviii} <http://www.southernlinc.com/promodetails.asp> (last accessed December 17, 2010).

^{lxxix} <http://www.southernlinc.com/privacy/return-policy.aspx> (last accessed December 17, 2010).

^{lxxx} <http://www.southernlinc.com/ourcoverage.asp?type=Consumer> (last accessed December 17, 2010).

^{lxxxi} Customer service representative confirmed (called 1-800-818-LINC December 29, 2010).

^{lxxxii} <http://www.southernlinc.com/prepaid/> (last accessed December 17, 2010).

^{lxxxiii} <http://www.southernlinc.com/customersupport/helpful-numbers.aspx> (last accessed December 17, 2010).

^{lxxxiv} Customer service representative confirmed (called 1-800-818-LINC December 29, 2010).

^{lxxxv} <http://www.southernlinc.com/faqs/faqs-sim-card.aspx> (last accessed December 17, 2010).

^{lxxxvi} <https://onlinestore.southernlinc.com/phones.aspx> (last accessed December 17, 2010).